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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JAMES CHARLES, Plaintiff and Respondent, v. DAVID LEVY, et. al., Defendants and Appellants.	A144962 (San Francisco County Super. Ct. No. CGC-14-540679)

Defendants, David Levy, individually and as trustee for the Levy Family Trust, Eleanor Louis Cummings, individually and as trustee for the Levy Family Trust, and the Levy Family Trust (collectively Levy), appeal from an order granting attorney fees to plaintiff James Charles after he successfully defended against Levy's special motion to strike to his complaint under the anti-SLAPP statute (Code Civ. Proc.,[1] § 425.16). We affirm.

I. BACKGROUND

Charles had been a long time, rent-controlled tenant in a residential rental unit owned by Levy. Following various disputes between Charles and Levy regarding the condition of the rental unit, Levy served Charles with a three-day notice to cure or quit in March 2014 and a three-day notice to pay rent or quit in July 2014. In July 2014, Charles

[1] All further undesignated statutory references are to the Code of Civil Procedure. SLAPP is an acronym for strategic lawsuit against public participation. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1109 & fn. 1.)

sued Levy on the grounds that his unit was or had become substandard, uninhabitable, unsafe, and unsanitary in violation of the rental agreement and applicable ordinances, codes, and statutes. In response, Levy filed a special motion to strike (§ 425.16), arguing that Charles's complaint arose from protected activity and that Charles could not establish a probability of prevailing on the merits.

The trial court denied the special motion to strike, finding that Levy had failed to establish that Charles's complaint arose out of protected activity. In so ruling, the trial court explained that the complaint was based on habitability defects. Although the complaint mentioned that Levy left "notes to scare and intimidate" Charles, the complaint did not mention either the March 2014 notice to cure or quit or the July 2014 notice to pay rent or quit. In fact, as the court noted, Charles's complaint was signed by counsel four days before the July 2014 notice was served.

In denying the special motion to strike, the trial court further ruled that Levy's motion was frivolous, entitling Charles to an award of costs and reasonable attorney fees pursuant to sections 425.16, subdivision (c)(1) and 128.5.

After the trial court denied the special motion to strike, Charles moved for attorney fees and costs incurred in opposing the motion, arguing that the frivolous finding by the trial court entitled him to attorney fees as a matter of law. Using an adjusted lodestar method, Charles sought $19,817.50 in fees based on the work performed by three attorneys in defending against the special motion to strike. Charles presented declarations from the three attorneys who worked on his case, along with detailed timesheets for each attorney, setting forth the specific work performed, the number of hours worked, and the hourly rate. In opposition, Levy argued that the attorney fees sought were "blatantly overstated and not reasonable." Ultimately, Charles reduced the amount of fees requested to $19,627.50

The court awarded Charles the full amount requested. Levy timely appealed from that order.

II. DISCUSSION

Under the anti-SLAPP statute, the court shall award costs and reasonable attorney fees to the plaintiff when it finds that an anti-SLAPP motion was "frivolous or . . . solely intended to cause unnecessary delay . . . pursuant to Section 128.5." (§ 425.16, subd. (c)(1).) Section 128.5, incorporated into the anti-SLAPP statute, uses essentially the same language to describe sanctionable conduct. It states that a trial court may order a party to pay the reasonable attorney fees "incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (§ 128.5, subd. (a).) "Frivolous" is defined as "totally and completely without merit or for the sole purpose of harassing an opposing party." (§ 128.5, subd. (b)(2).)

Levy does not challenge Charles's entitlement to attorney fees or the trial court's determination that the special motion to strike was frivolous. Rather, he contends that that the amount of the award is excessive and that the trial court should have reduced the redundant and excessive fees sought by Charles.

We review an order granting attorney fees under the anti-SLAPP statute for abuse of discretion. (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 450.) The court abuses its discretion when its ruling exceeds the bounds of reason, and appellant has the burden of establishing an abuse of discretion. (*Ibid.*) Accordingly, we will not disturb an attorney fee award unless the amount "is manifestly excessive in the circumstances (*Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 782) or "so large . . . that it shocks the conscience." (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134.) We find the trial court acted well within its discretion in awarding Charles $19,627.50 in attorney fees.

Levy asserts that the trial court rendered a tentative ruling granting reasonable attorney fees in the amount of $9,627.50. He further claims that at the hearing on the motion for attorney fees, the trial court defended its tentative ruling and admonished Charles's counsel for billing for discussions between the attorneys and for what appeared to be duplicative hours. However, neither the tentative ruling nor the transcript from the hearing is included in the record on appeal. Rather, what is included is a proposed order

prepared by Charles's counsel seeking $9,627.50 in attorney fees. In granting the order, the trial court struck out the word proposed, as well as the amount of $9,627.50. The court then handwrote in the sum of $19,627.50. Inasmuch as Charles's counsel prepared the order and had requested the amount of $19,627.50 in fees, it would appear that the $9,627.50 figure was a typographical error.

In any event, Levy's claim that the number of hours was inflated is without merit. Levy has presented no evidence to refute the declarations by counsel for Charles, which set forth the collaborative nature of defending against the special motion to strike. We are presented with no evidentiary basis to second guess the implicit conclusion of the trial court that the collaboration of the three attorneys was not duplicative; we have no basis to reverse that decision as an abuse of discretion. (See *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1248 [argument that billing is duplicative and unreasonable, unsupported by citation to record or explanation of which fees were challenged gives no basis to disturb trial court's discretionary fee ruling]; *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1052-1053 [absent evidence that fee award was based on unnecessary or duplicative work, the award will be affirmed]; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5 [fee award affirmed where plaintiff has not presented any evidence in the record that the award was based upon unnecessary or duplicative work or any other improper basis].)

Levy's argument on appeal can be best described as cursory. His basic position is that trial court abused its discretion in "fail[ing] to discount redundant hours charged by the three attorneys working on the one motion." In support of this assertion, Levy, after citing to instances of the attorneys working on similar issues, states in a conclusory manner that "the inefficiency of this three attorney team and their excessive billing efforts" required a reduction in fees. Levy also adds that since his anti-SLAPP motion was allegedly "frivolous," it should not have taken over 49.7 hours to oppose. This argument fails to take into consideration that it likely takes far less time to file a frivolous

motion than to oppose one. Also, Charles had the burden of showing that his causes of action did not arise from protected activity and that his causes of action had merit. (See § 425.16.) To this end, the trial court did not abuse its discretion by awarding fees for the time the three attorneys spent discussing the anti-SLAPP motion amongst themselves, as well as their joint efforts in researching and drafting the opposition. The trial court could reasonably have concluded using three attorneys, one supervisor and two junior attorneys at significantly lower billing rates, was an efficient way to manage the case.

III. DISPOSITION

The order is affirmed. Charles is entitled to recover his costs on appeal.

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Reardon, Acting P.J.

We concur:

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Rivera, J.

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Streeter, J.